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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
COMMONWEALTH EDISON COMPANY) Docket Nos. 50-456OL
(Braidwood Nuclear Power Station) 50-457OL
Units 1 and 2))

COMMONWEALTH EDISON COMPANY'S
MOTION TO PARTICULARIZE
ROREM CONTENTION 1(a)

Commonwealth Edison Company ("Applicant") hereby moves this Atomic Safety and Licensing Board to enter an order particularizing Rorem Contention 1(a) as stated herein. In support of this Motion, Applicant states as follows:

1. Rorem Contention 1(a) states:

Intervenor contends that an adequate emergency plan for the Braidwood Station should include the following:

(a) a program for informing the public within 10 miles of the station of the means for obtaining instructions for evacuation or other protective measures in the event of a radiological emergency originating at the Station.

As stated, Rorem Contention 1(a) could refer to either or both of two distinct activities. The first of these activities is the public education and information program that is implemented prior to an accident. The second activity is the notification of the public at the time of an accident. The distinction of these two

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emergency planning activities is evident in the Commission's regulations. ^{1/}

2. Applicant endeavored to determine the scope of Rorem Contention 1(a) in its discovery on Ms. Rorem. Discovery on this contention concluded on August 5, 1985 when Applicant received Ms. Rorem's answers to Applicant's second set of interrogatories.

3. Ms. Rorem's answers to Applicant's interrogatories numbers 2, 4, and 8 ^{2/} regarding Contention 1(a) indicate an exclusive concern with the pre-accident public education and information program. In those interrogatories, Ms. Rorem was asked to particularize aspects of Contention 1(a). In her responses, Ms. Rorem discusses the following activities all in the context of a pre-accident public education and information program: Applicant's public information brochure; community information programs; school instruction; information for transients; availability of a toll-free information service; identification of

^{1/} Pre-accident public education and information is part of 10 C.F.R. §50.47(b)(7); 10 C.F.R. Part 50 Appendix E, Section IV.D., subparagraph 2; and the corresponding guidance found in NUREG-0654, Section II.G., paragraphs 1 and 2.

Public notification during an accident is part of 10 C.F.R. § 50.47(b)(5); 10 C.F.R. Part 50, Appendix E Section IV.D., subparagraph 3; and the corresponding guidance found in NUREG-0654, Section II.E. and Appendix 3.

^{2/} Ms. Rorem's handwritten responses to Applicant's first set of interrogatories, dated April 17, 1985 are attached hereto as Attachment A.

persons with special needs; and identification of responsible emergency agencies.

4. The preoccupation of Rorem Contention 1(a) with a pre-accident public education and information program is also evident in Ms. Rorem's May 21, 1985 deposition, at pages 24-45 (Attachment B hereto). Of particular note is Ms. Rorem's response when she was asked to clarify whether she was commenting on public education during an accident or public education about an accident:

Q. You are talking about education before an accident ever occurs, though, is that correct?

A. Absolutely.

(Deposition transcript, p. 45.)

5. Ms. Rorem also indicated the parameters of Contention 1(a) in the following dialogue with the Licensing Board at the July 23, 1985 prehearing conference:

JUDGE BRENNER: Can you tell me a little bit as to what you believe is in controversy in 1(a)? I'll read it out loud. Do you still have a copy of your contention?

MRS. ROREM: Yes.

JUDGE BRENNER: [Reads Rorem Contention 1(a).]

Do you mean the siren warnings? Do you mean that plus something else? Do you mean something else and not that?

MRS. ROREM: I mean quite a bit else. I mean that -- well, Applicant and Staff are fairly familiar with what I mean, which involves educating the public beforehand about what procedure should be followed, why they should be followed --

JUDGE BRENNER: Such things as -- I'm sorry, go ahead.

MRS. ROREM: Such things as the emergency planning brochure, other public information programs, education in the school systems, whatever.

(July 23, 1985 Prehearing Conference transcript, pp. 122-23.)

Although Ms. Rorem's initial response to Judge Brenner's question ("I mean quite a bit else") may be ambiguous, the itemization which follows leaves little doubt that she intends only that the pre-accident public education and information program be placed in controversy under Rorem Contention 1(a).

6. Ms. Rorem's statements in discovery and at the prehearing conference plainly indicate that Rorem Contention 1(a) concerns only the pre-accident public education and information program and does not concern public notification during an accident. Accordingly, Rorem Contention 1(a) should read as follows:

Intervenor contends that an adequate emergency plan for the Braidwood Station should include the following:

(a) a program to periodically inform the public within the EPZ on how they will be notified and what their initial actions should be in the event of a radiological emergency originating at the Station.

7. The bases for this motion are twofold. First, it is well established that one of the purposes of discovery is to determine the extent of a contention, thereby sharpening the issues for litigation. Pennsylvania Power & Light (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 N.R.C. 317, 334-35 (1980); Commonwealth Edison Company (Byron Nuclear Power Station Units 1

and 2), ALAB-678, 15 N.R.C. 1400, 1417 (1982). This process avoids needless expense of time and effort in addressing issues which are not in controversy. Applicant has used discovery for this purpose and thereby has established the parameters of Rorem Contention 1(a). The granting of this motion will fulfill the purpose of discovery and Commission policy as articulated in the May 27, 1981 Statement of Policy on Conduct of Licensing Proceedings, 46 Fed. Reg. 28533, Section III.D. Second, as was noted by Judge Brenner, supra, the scope of Rorem Contention 1(a) is not clear on its face. Although Applicant has now determined the scope of Rorem Contention 1(a), it is faced nevertheless with the dilemma of either pursuing its interpretation and then being surprised at the hearing with a broader interpretation, or preparing its case at the outset, perhaps needlessly, on the full range of possible interpretations under Contention 1(a). Applicant should not be required to litigate Contention 1(a) on this basis. The grant of the Motion will prevent this prejudice to the Applicant. Moreover, Ms. Rorem is without counsel on this contention and Applicant believes that the particularization of Contention 1(a) will assist her in focusing the preparation of her case.

WHEREFORE, the Motion should be granted.

Respectfully submitted,

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DATED: August 15, 1985

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
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COMMONWEALTH EDISON COMPANY)	Docket Nos. 50-456
)	50-457
(Braidwood Nuclear Power Station)	
Units 1 and 2))	

CERTIFICATE OF SERVICE

I hereby certify that copies of COMMONWEALTH EDISON COMPANY'S MOTION TO PARTICULARIZE ROEM CONTENTION 1(a) were served on the persons listed below by deposit in the United States mail, first-class postage prepaid, unless otherwise indicated, this 15th day of August, 1985.

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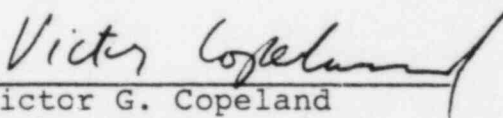
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